

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6087

IN THE MATTER OF:

Served January 16, 2001

Application of ADVENTURES BY DAWN)
L.L.C. for a Certificate of)
Authority -- Irregular Route)
Operations)

Case No. AP-2000-89

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. The fitness inquiry focuses on an applicant's financial fitness, operational fitness, and regulatory compliance fitness.¹

To establish financial fitness, an applicant must show the present ability to sustain operations during the first year under WMATC authority.² In this case applicant has filed a balance sheet as of July 31, 2000, showing assets of \$1,403,097; liabilities of \$1,211,584; and equity of \$191,513. Applicant also has filed a projected operating statement for the first twelve months of WMATC operations showing WMATC revenue of \$100,000; other revenue of \$737,000; expenses of \$710,391; and net income of \$126,609. On the basis of this evidence, we find applicant financially fit.

To establish operational fitness, an applicant must demonstrate the willingness and ability to provide safe and adequate service.³ In this case applicant states that it has been conducting charter operations under federal and state authority since October 1999 and that it proposes conducting such operations in the Metropolitan District using four motorcoaches and two minibuses. Safety certificates filed in support of the application show that applicant's vehicles were inspected recently in accordance with federal and state requirements and found to be fit for use in commercial operations. On the basis of this evidence, we find applicant operationally fit.

¹ In re Thomas B. Howell, t/a Presidential Ducks, No. AP-00-07, Order No. 5955 at 8 (Aug. 10, 2000).

² Order No. 5955 at 8.

³ Id. at 10.

To establish regulatory compliance fitness, an applicant must become familiar with, and evidence a willingness to comply with, the Compact and Commission regulations.⁴ In this case applicant avers that it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder. Normally, that averment would suffice. But applicant has a history of noncompliance.

This is applicant's second application. The first was denied without prejudice for lack of compliance fitness based on the conduct of applicant's owners/officers, William B. Adona and Mohammad R. Khan.⁵ The Commission found that Mr. Adona had participated in unlawful passenger carrier operations in the Metropolitan District in 1994 and 1995⁶ and had failed to answer the Commission's civil complaint concerning those activities in 1997.⁷ The Commission found that Mr. Khan materially facilitated unlawful passenger carrier operations in the Metropolitan District from 1996 to 1998.⁸ In addition, the letters "WMATC" were observed on one of applicant's vehicles while the first application was pending,⁹ as though approval was a foregone conclusion or had already occurred.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.¹⁰

When the Commission decided the first application, it found that the nature, extent and persistence of violations deemed to have occurred, together with the lack of mitigating circumstances, warranted denial of applicant's request for operating authority.¹¹ The question thus presented is whether the evidence adduced in this proceeding supports approval of the current application notwithstanding our previous denial. The answer to that question depends on the quality of applicant's efforts to correct its past mistakes and on the steps it has taken to ensure those mistakes are not repeated.

⁴ See APPLICATION TO OBTAIN, TRANSFER OR AMEND IRREGULAR ROUTE AUTHORITY at 6 (applicant's verification).

⁵ In re Adventures By Dawn L.L.C., No. AP-99-68, Order No. 5837 (Mar. 14, 2000).

⁶ Order No. 5837 at 2-3, 6.

⁷ Id. at 2.

⁸ Id. at 5.

⁹ Id. at 1, 6.

¹⁰ In re Madison Limo. Serv., Inc., t/a Madison Limo, No. AP-96-18, Order No. 4857 (May 22, 1996).

¹¹ Order No. 5837 at 6.

The application indicates that applicant has relocated its business since the first application was decided.¹² Relocation of applicant's business is a significant step. When applicant prosecuted its first application it was still conducting business out of the location where virtually all of the past illegal activity had taken place, and there was evidence that one or more persons also involved in that illegal activity -- but who have not yet accounted to the Commission for their wrongdoing -- were still conducting business at that location and would have benefited indirectly from a grant of operating authority to applicant. By correcting that situation applicant has materially diminished the likelihood that it will repeat the mistakes that it and its owners have made in the past.

Also of significance is applicant's record of operations under federal and state authority. The record shows applicant has held operating authority from the United States Department of Transportation (USDOT) and the Maryland Public Service Commission (MDPSC) since October 1999.¹³ The Commission takes official notice that MDPSC's Transportation Division files show no record of complaint or enforcement action against applicant.¹⁴ USDOT's files, however, tell a slightly different story.

The online files of USDOT's Federal Motor Carrier Safety Administration (FMCSA) indicate that applicant has undergone twelve vehicle inspections and three driver inspections since applying for and receiving federal and state authority.¹⁵ None of applicant's vehicles has been ordered out of service during that period, but one of applicant's drivers has.¹⁶ According to a copy of the citation issued by Pennsylvania transportation officials and filed by applicant as part of the record in this proceeding, the driver was cited on September 16, 2000, for failing to properly maintain a log of on-duty hours as required by Federal Motor Carrier Safety Regulations.¹⁷ The driver was ordered not to operate a commercial motor vehicle until completing eight consecutive hours in off-duty status. Applicant, on the other hand, has certified in the return portion of the citation that the violation has since been corrected and that applicant has taken action to assure future compliance.¹⁸ There is no indication in

¹² Applicant also states that it has retained expert counsel as a resource on compliance matters. Retaining counsel is not so significant in this case because applicant was represented by counsel on the first application when applicant made the now acknowledged error of displaying "WMATC" on its vehicles. It does not do much good to hire a compliance officer if you make no use of that resource.

¹³ Application Exhibit H.

¹⁴ Under Commission Rule No. 22-07, the Commission may take notice of official records on file with any of the Compact signatories' agencies. In re William E. Gillison, t/a Quiana Tours, & Quiana Tours, Inc., No. MP-98-16, Order No. 5359 (June 25, 1998).

¹⁵ See www.saferysys.org.

¹⁶ See *id.*

¹⁷ 49 C.F.R. § 395.8.

¹⁸ Applicant has augmented the record with a copy of its reprimand to the driver.

the FMCSA's online files that applicant itself was ordered out of service as a result of the driver's infractions.

In the past, we have approved the applications of errant carriers subject to the condition -- imposed under Article XI, Section 7(d), of the Compact -- that they serve a period of probation as a means of ensuring prospective compliance.¹⁹ We believe that probation would be appropriate here, as well, given the circumstances.

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 592 shall be issued to Adventures By Dawn L.L.C., 6307 Aaron Lane, Clinton, MD 20735.

2. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

3. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

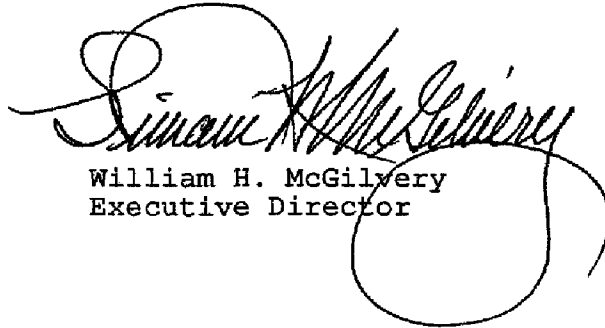
4. That applicant and its owners/officers shall be placed on probation for a period of one year commencing with the issuance of a certificate of authority in accordance with the terms of this order and that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant or its owners/officers during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's

¹⁹ E.g., In re Affordable Airport Charter, Inc., & Bach Vu, t/a Affordable Airport Charter, No. AP-97-47, Order No. 5400 (Aug. 31, 1998) (applicant placed on 180 days probation after violating Compact while application pending); In re Phoenix Limo. & Tour Co., No. AP-98-10, Order No. 5304 (Apr. 6, 1998) (applicant placed on 90 days probation after violating Compact while revoked).

operating authority without further proceedings, regardless of the nature of the violation.

5. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:

A handwritten signature in cursive script, appearing to read "William H. McGilvery", is written over a circular stamp or seal. The signature is dark and fluid, with the last name being particularly prominent.

William H. McGilvery
Executive Director